

AFFIRMED AND REMANDED

Susano, J.

This is a negligence action arising out of a two-vehicle collision that occurred on U.S. Highway 27 ("Highway 27") near its intersection with Main Street in Oneida, Tennessee. The jury returned a verdict for the plaintiff, Phyllis Phillips, in the amount of \$25,000, finding the defendant, Victoria Lieb, 100% at fault. The defendant appealed, arguing that the trial court erred in its charge to the jury. She presents the following issue for our review:

Did the trial court err in refusing to charge the jury regarding the provisions of T.C.A. § 55-8-140(5)(F)¹ and in charging the jury with respect to the provisions of T.C.A. § 55-8-131?²

I.

This accident occurred shortly after 2:00 p.m. on November 3, 1995. Highway 27 in Oneida is a heavily-traveled road. The collision occurred at a point where the southbound

¹T.C.A. § 55-8-140(5)(F) provides, in pertinent part, as follows:

The driver of a vehicle intending to turn at an intersection shall do so as follows:

* * *

(5) TWO-WAY LEFT TURN LANES. Where a special lane for making left turns by drivers proceeding in opposite directions has been established:

* * *

(F) When vehicles enter the turn lane proceeding in opposite directions, the first vehicle to enter the lane shall have the right-of-way.

²T.C.A. § 55-8-131 provides as follows:

The driver of a vehicle about to enter or cross a highway from a private road or driveway shall yield the right-of-way to all vehicles approaching on the highway.

lanes on Highway 27 merge into one lane; the northbound flow of traffic expands into two lanes; and a center turn lane separates northbound and southbound traffic. The center turn lane is marked, at the intersection of Highway 27 and Main Street, with arrows pointing left, indicating that drivers from both directions can use the lane to turn left onto Main Street. A caution light above the turn lane alerts drivers to be aware of the traffic flow as they approach the intersection.

Plaintiff was traveling southbound on Highway 27 on her way to a video store on Main Street. After putting on her left turn signal, she entered the turn lane for the purpose of turning left onto Main Street. When she entered the turn lane, she looked to make sure that no other cars were in that lane. Shortly thereafter, her vehicle collided in the turn lane with the right front fender of the vehicle driven by the defendant. The plaintiff testified that she did not see the defendant before the moment of impact.

Just before the accident, the defendant had stopped at the BP Gas Station located on the west side of Highway 27 to put air in her tires. She was on her way home. She lived a few miles north of the BP Gas Station. When she left the BP Gas Station, traffic was heavy in both directions. She pulled up to enter Highway 27 from the BP parking lot, intending to go northbound. A driver in the southbound lane stopped and motioned her to cross in front of the former's car. The defendant pulled across the single southbound lane and entered the turn lane at an angle, heading north, intending to merge into the northbound

lanes of Highway 27. Her vehicle then collided with the plaintiff's vehicle.

The trial court refused the defendant's request that it instruct the jury with respect to the provisions of T.C.A. § 55-8-140(5)(F).³ It did charge the jury as to the provisions of T.C.A. § 55-8-131,⁴ as requested by the plaintiff. After her motion for a new trial was denied, the defendant appealed.

II.

We review the jury charge in its entirety and as a whole to determine whether the trial judge committed reversible error. *Otis v. Cambridge Mut. Fire Ins. Co.*, 850 S.W.2d 439, 446 (Tenn. 1992); *In re Estate of Elam*, 738 S.W.2d 169, 174 (Tenn. 1987); *Grissom v. Metropolitan Gov't of Nashville*, 817 S.W.2d 679, 685 (Tenn.App. 1991). The charge will not be invalidated if it "fairly defines the legal issues involved in the case and does not mislead the jury." *Otis*, 850 S.W.2d at 446; *Grissom*, 817 S.W.2d at 685.

At the trial level, the lower tribunal is the "final arbiter[] of the legal principles properly applicable to a particular case." *Betty v. Metropolitan Gov't.*, 835 S.W.2d 1, 10 (Tenn.App. 1992); *Stroud v. State*, 279 S.W.2d 82, 89 (Tenn. App. 1955). In *Ladd v. Honda Motor Co., LTD.*, 939 S.W.2d 83

³See footnote 1 of this opinion.

⁴See footnote 2 of this opinion.

(Tenn.App. 1996), we set out criteria to be used by trial courts to determine when requested instructions should be given:

...trial courts should give a requested instruction (1) if it is supported by the evidence, (2) if it embodies the party's theory of the case, (3) if it is a correct statement of the law, and (4) if its substance has not already been included in other portions of the charge. *Spellmeyer v. Tennessee Farmers Mut. Ins. Co.*, 879 S.W.2d 843, 846 (Tenn.Ct.App. 1993). It should deny requested instructions that are erroneous or incomplete. *Betty v. Metropolitan Gov't*, 835 S.W.2d 1, 10 (Tenn.Ct.App. 1992).

Id. at 102-103. We will not reverse a trial court unless the error is prejudicial and it "more probably than not" affected the judgment. T.R.A.P. 36(b). See also *DeRossett v. Malone*, 239 S.W.2d 366, 378 (Tenn. App. 1950).

III.

We first address the refusal of the trial court to instruct the jury with respect to the provisions of T.C.A. § 55-8-140(5)(F).

In general, T.C.A. § 55-8-140 addresses vehicles "intending to turn at an intersection." Specifically, subsection (5) of the statute addresses the use of "TWO-WAY LEFT TURN LANES." When the statute is read in its entirety, it is clear that subsection (5)(F) applies only to left turn lanes and only

when those lanes are being utilized by vehicles intending to turn left out of the turn lane.

The defendant strenuously argues that T.C.A. § 55-8-140(5)(F) defines her "duty of care owed to the plaintiff." Further, she contends that since she -- the defendant -- was the first vehicle to enter the left turn lane, she had the right-of-way under T.C.A. § 55-8-140(5)(F). We do not find that the defendant's alleged liability in this case is governed by this particular statute.

The defendant admitted in her answer and testified at trial that the accident occurred as she was attempting to move from the BP Gas Station, across southbound traffic and into the northbound traffic lanes; but it is clear that the statute under discussion is not applicable to such a movement. Rather, by its clear terms, it establishes the criteria for determining the right-of-way for vehicles who enter the left turn lane *for the purpose of making a left turn out of the turn lane*. The defendant did not enter the left turn lane for the purpose of making a left turn; she entered that lane for the purpose of merging into the northbound traffic lanes. T.C.A. § 55-8-140(5)(F), by its express terms, simply does not apply to a vehicle entering the left turn lane for some purpose other than the making of a left turn.

The trial judge correctly refused to give the requested instruction regarding T.C.A. § 55-8-140(5)(F). Such an instruction was not supported by the evidence, and hence would

have confused and misled the jury. A trial court "must give substantially accurate instructions concerning the law applicable to the matters at issue." **Ladd**, 939 S.W.2d at 94. A trial court must deny requested instructions that do not apply to the legal issues of the case and could, therefore, mislead the jury. **Otis**, 850 S.W.2d at 446. We find no error in the trial court's refusal to charge T.C.A. § 55-8-140(5)(F).

IV.

The defendant next contends that the trial court committed prejudicial error when it instructed the jury regarding the provisions of T.C.A. § 55-8-131.

The defendant emphasizes in her brief that since T.C.A. § 55-8-131 applies when a vehicle is *about* to enter or cross a highway, the statute is not applicable to her because she had already entered and crossed the southbound lane of Highway 27, and had entered the turn lane prior to the collision. We disagree with the defendant's analysis.

We addressed this same issue in **Inabinet v. Cravath**, 749 S.W.2d 40 (Tenn.App. 1987), wherein we stated:

Tennessee Code Ann. § 55-8-131 refers to a "driver of a vehicle *about* to enter or cross a highway" (emphasis added). Before entering, that is, immediately preceding his entry onto the highway, the driver must ascertain that there is no approaching traffic that would interfere with his entering the highway with safety. The statute applies to circumstances that exist

before the driver enters the highway from a private drive. The statute does not apply to circumstances that occur after the driver has entered the highway.

Id. at 41. The evidence at trial established that southbound traffic on Highway 27 around the time of the accident was heavy and that there were vehicles approaching the pertinent area of the roadway when the defendant pulled from the BP Gas Station intending to enter the northbound traffic lanes. The motioning of another driver is not an adequate substitute for one's own assurance that there is no approaching traffic that will interfere with the latter's safe entry onto the highway. It is clear that the traffic circumstances existing at the time the defendant left the BP Gas Station parking lot were those that potentially interfered with her safe entry into the northbound lanes of Highway 27. The jury had to determine whether the defendant could safely move off private property and drive north on Highway 27. Thus, the trial court did not err when it charged the jury with respect to the provisions of T.C.A. § 55-8-131. The statute correctly focused the jury's attention on Highway 27 traffic at the time immediately preceding the defendant's move off of private property. It was for the jury to say whether such a move could then be made with safety.

V.

The judgment of the trial court is affirmed. Costs on appeal are taxed against the appellant. This case is remanded to

the trial court for enforcement of the judgment and collection of costs assessed there, all pursuant to applicable law.

Charles D. Susano, Jr., J.

CONCUR :

Houston M. Goddard, P.J.

Don T. McMurray, J.